



## **DEPARTMENT OF COMMERCE**

### **International Trade Administration**

**[Application No. 18-00002]**

#### **Export Trade Certificate of Review**

**ACTION:** Notice of application for an Export Trade Certificate of Review for Alaska Groundfish Commission (“AGC”), Application Number 18-00002.

**SUMMARY:** The Office of Trade and Economic Analysis (“OTEA”) of the International Trade Administration, Department of Commerce, received an application for an Export Trade Certificate of Review (“Certificate”). This notice summarizes the application and requests comments relevant to whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** Joseph Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, (202) 482-5131 (this is not a toll-free number) or email at [etca@trade.gov](mailto:etca@trade.gov).

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001-21) (“the Act”) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR Part 325 (2018). OTEA is issuing this notice pursuant to 15 CFR 325.6(a), which requires the Secretary of Commerce to publish a summary of the application in the Federal Register, identifying the applicant and each member, and summarizing proposed export conduct.

## **Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as “Export Trade Certificate of Review, application number 18-00002.”

## **Summary of the Application**

Applicant: Alaska Groundfish Commission, address c/o Mundt MacGregor L.L.P. (below)

Contact: Duncan R. McIntosh, Attorney at Law, Mundt MacGregor L.L.P., 271 Wyatt Way NE, Suite 106, Bainbridge Island, WA, 98110; (206) 319-1105

Application No.: 18-00002

Date Deemed Submitted: October 22, 2018

Summary: AGC and its seven proposed Members (as defined in 15 CFR 352.2(l)) seek a Certificate to engage in the export conduct described below.

**Applicant / Certificate Holder**

- AGC

**Proposed Members**

- Ocean Peace, Inc., Seattle, WA
- M/V Savage, Inc., Seattle, WA
- AK Victory, Inc., Seattle, WA
- The Fishing Company of Alaska, Inc., Seattle, WA
- Alaska Warrior, Inc., Seattle, WA
- O'Hara Corporation, Rockland, ME
- O'Hara DISC, Inc., Rockland, ME

**Export Products**

- AGC and its Members propose to export the following six products, which are frozen-at-sea (i.e., export product is frozen on the catcher-processor trawl vessel while at-sea), and in headed and gutted (i.e., head and viscera are removed) and round (i.e., whole) forms: Atka mackerel, Pacific Ocean perch, yellowfin sole, Pacific cod, flathead sole, and rock sole (collectively, the "Export Products").

**Export Conduct**

- AGC and its Members propose to export to all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).
- AGC and its Members seek certification for the following activities and exchanges of information.

1. Each Member will from time to time independently determine in its sole discretion (i) the quantity of Export Product that it makes available for sale in export markets, and (ii) whether any portion of such quantity will be sold independently by it, be sold in cooperation with some or all of the other Members, or be made available to AGC for sale in export markets. AGC may not require any Member to export any minimum quantity of Export Product.
2. AGC and/or its Members may enter into agreements to act in certain countries or markets as the Members' exclusive or non-exclusive export intermediary for the quantity of Export Product dedicated by each Member for sale by AGC or any Member in that country or market. In any such agreement (i) AGC or the Member acting as the exclusive export intermediary may agree not to represent any other supplier of Export Product with respect to one or more export market, and (ii) Members may agree that they will export the quantity of Export Product dedicated for sale in such export markets only through AGC or the Member acting as exclusive export intermediary, and that they will not export Export Product otherwise, either directly or through any other export intermediary.
3. AGC and/or one or more of its Members may engage in joint bidding or selling arrangements for export markets and allocate sales resulting from such arrangements among the Members.
4. The Members may refuse to deal with export intermediaries other than AGC and its Members.
5. AGC may, for itself and on behalf of its Members, by agreement with its or its Members' distributors or agents, or on the basis of its own determination:

- a) establish the prices at which Export Product will be sold in export markets;
  - b) establish standard terms of sale of Export Product;
  - c) establish standard quality grades for Export Product;
  - d) establish target prices for sales of Export Product by its Members in export markets, with each Member remaining free to deviate from such target prices in its sole discretion;
  - e) subject to the limitations set forth in paragraph 1, above, establish the quantity of Export Product to be sold in export markets;
  - f) allocate among the Members export markets or customers in the export markets;
  - g) refuse to quote prices for, or to market or sell, Export Product in export markets; and
  - h) engage in joint promotional activities aimed at developing existing or new export markets, such as advertising and trade shows.
6. AGC may, for itself and on behalf of its Members, contact non-member suppliers of Export Product to elicit information relating to price, volume delivery schedules, terms of sale, and other matters relating to such suppliers' sales or prospective sales in export markets.
7. Subject to the limitations set forth in paragraph 1, above, AGC and its Members may agree on the quantities of Export Product and the prices at which AGC and its Members may sell Export Product in and for export markets, and may also agree on territorial and customer allocations in export markets among the

Members.

8. AGC and its Members may enter into exclusive and non-exclusive agreements appointing third parties as export intermediaries for the sale of Export Product in export markets. Such agreements may contain the price, quantity, territorial and customer restrictions for export markets contained in paragraph 5, above.
9. AGC and its Members may solicit individual non-Member suppliers of Export Product to sell such Export Product to AGC or Members for sale in export markets.
10. AGC and its Members may prescribe conditions for withdrawal of Members from and admission of Members to AGC.
11. AGC may, for itself or on behalf of its Members, establish and implement a quality assurance program for Export Product, including without limitation establishing, staffing, and operating a laboratory to conduct quality testing, promulgating quality standards or grades, inspecting Export Product samples and publishing guidelines for and reports of the results of laboratory testing.
12. AGC may conduct meetings of its Members to engage in the activities described in paragraphs 1 through 11, above.
13. AGC may compile for, collect from, and disseminate to its Members, and the Members may discuss among themselves, either in meetings conducted by AGC or independently via telephone and other available and appropriate modes of communication, the following types of information with respect to the export of Export Product to export markets only:
  - a) Sales and marketing efforts, and activities and opportunities for sales of

Export Product, including but not limited to selling strategies and pricing, projected demand for Export Product, standard or customary terms of sale in export markets, prices and availability of Export Product from competitors, and specifications for Export Product by customers in export markets;

- b) Price, quality, quantity, source, and delivery dates of Export Product available from the Members for export including but not limited to export inventory levels and geographic availability;
- c) Terms and conditions of contracts for sales to be considered and/or bid on by AGC and its Members;
- d) Joint bidding or selling arrangements and allocation of sales resulting from such arrangements among the Members, including each Member's share of the previous calendar year's total foreign sales;
- e) Expenses specific to exporting to and within export markets, including without limitation transportation, trans- or intermodal shipments, cold storage, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs duties, and taxes;
- f) U.S. and foreign legislation regulations and policies affecting export sales; and
- g) AGC's and/or its Members' export operations, including without limitation, sales and distribution networks established by AGC or its Members in export markets, and prior export sales by Members (including export price information).

Dated: October 31, 2018

**Joseph Flynn,**

*Director,*

*Office of Trade and Economic Analysis,*

*International Trade Administration,*

*U.S. Department of Commerce.*

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